

R E M A R K S

Claims 1 to 9, 11 and 14 to 16 as set forth in Appendix II of this paper are now pending in this case. Claims 10, 12 and 13 have been canceled, and Claims 11 and 16 have been amended, as indicated in the Listing of Claims set forth in Appendix I of this paper.

Accordingly, Claim 11 has been rewritten in independent form, and the dependency of Claim 16 has been corrected. No new matter has been added.

Additionally, applicants herewith submit a substitute abstract. The substitute abstract is an English language translation of the abstract filed in the international proceedings of this application and replaces page 37 of the present application which appears to have become detached.

The Examiner requested clarification as to the claims which are pending in this case. Accordingly, the following is respectfully submitted:

Presently pending, in consideration of the amendment herewith submitted, are Claims 1 to 9, 11 and 14 to 16 as set forth in Appendix II of this paper.

Originally, Claims 1 to 17 were filed in the international application. Those Claims 1 to 17 were amended during the international proceedings. The respective amendment inter alia canceled Claim 14 of the claims filed in the international application, and renumbered Claims 15 to 17 of the international application as Claims 14 to 16. At the time the international application entered the U.S. national stage, the claims in the application were, therefore, Claims 1 to 16.

Upon entry into the national stage, applicants further amended the claims of the international application to remove multiple dependency in Claims 4 to 7 and 13 to 15. Accordingly, applicants' preliminary amendment included

- 1) a clean copy of the amended claims, namely Claims 4 to 7 and 13 to 15;
- 2) a marked-up copy of the amended claims, namely Claims 4 to 7 and 13 to 15; and
- 3) a clean copy of Claims 1 to 16 as preliminarily amended.

The amendment submitted with this paper is based on the clean copy of Claims 1 to 16 as preliminarily amended.

The Examiner has required election of, and restriction of the application to, one of the following groups of claims

- I) Claims 1 to 9 and 14 to 17, drawn to compounds, their preparation, compositions comprising them, and methods of using them¹⁾;
 - II) Claims 10 and 12 drawn to a group of intermediates²⁾; and
 - III) Claims 11 and 13 drawn to another group of intermediates³⁾;
- contending that the respective groups of claims lack unity of invention under PCT Rule 13.

Applicants herewith elect group I corresponding to Claims 1 to 9 and 14 to 16 as set forth in Appendix II of this paper. Claims 10 and 12 (Group II) and Claim 13 (part of Group III) have been canceled. Traversal of the Examiner's restriction requirement to the extent that it concerns Claim 11 is, however, deemed appropriate in light of the following.

The Examiner takes the position that unity of invention is lacking because the final products of formula (I) can be made by methods not involving the intermediate defined in Claim 11. On the one hand, the mere fact that the final products can be made by methods which do not involve applicants' intermediate is not seen to reflect in any way on the question whether the intermediate and the final product are technically related involving one or more of the same or corresponding special technical features as provided by PCT Rule 13.2 for circumstances where the requirement of unity of invention is met.

On the other hand, the guidelines concerning the determination of unity of invention under the PCT which are provided in the Administrative Instructions, Annex B, Part 1, section (g) provide that

(ii) Unity of invention shall be considered to be present in the context of intermediate and final products where the following two conditions are fulfilled:

(A) the intermediate and final products have the same essential structural element, in that

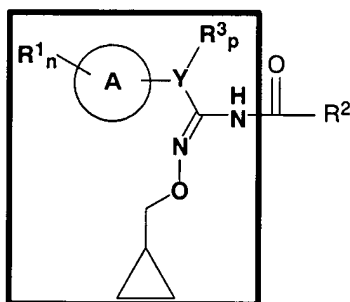
(1) the basic chemical structures of the intermediate and the final products are the same, or

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- 1) The claims of Group I correspond to Claims 1 to 9 and 14 to 16 as submitted in applicants' preliminary amendment.
 - 2) The claims of Group II correspond to Claims 10 and 12 as submitted in applicants' preliminary amendment and are canceled in the present amendment.
 - 3) The claims of Group III correspond to Claims 11 and 13 as submitted in applicants' preliminary amendment; Claim 11 is amended and Claim 13 is canceled in the present amendment.

(2) the chemical structures of the two products are technically closely interrelated, the intermediate incorporating an essential structural element into the final product, and

(B) the intermediate and final products are technically interrelated, this meaning that the final product is manufactured directly from the intermediate or is separated from it by a small number of intermediates all containing the same essential structural element.

The intermediate of formula (IV) which is defined in Claim 11 incorporates an essential structural element into the final product of formula (I) as apparent from the following representation of formula (I) wherein the parts incorporated by the intermediate of formula (IV) are highlighted⁴⁾:



Moreover, applicants' intermediate of formula (IV) and the final product of formula (I) are technically interrelated in that the final product is manufactured directly from the intermediate as, for example, illustrated by the last section of Claim 14. In accordance with the guidelines provided in the PCT Administrative Instructions, unity of invention is, therefore, considered to be present. In light of the foregoing it is respectfully requested that the restriction requirement be withdrawn. Favorable action is solicited.

REQUEST FOR EXTENSION OF TIME:

It is respectfully requested that a one month extension of time be granted in this case. A check for the \$110.00 fee is attached.

4) In the representation of formula (I) the orientation of the moiety -C(=O)-R² has been altered for clarity.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account No. 11.0345. Please credit any excess fees to such deposit account.

Respectfully submitted,

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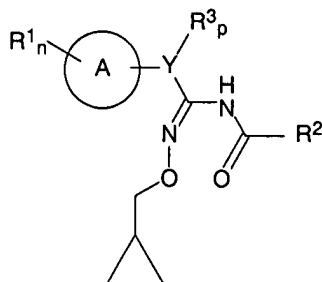
Encl.: THE LISTING OF CLAIMS (Appendix I)
THE AMENDED CLAIMS (Appendix II)
THE SUBSTITUTE ABSTRACT (Appendix III)

HBK/BAS

A P P E N D I X I:

THE LISTING OF CLAIMS (version with markings):

1. (original) A benzamidoxime derivative of the formula I



where:

- A is an aryl or hetaryl radical from the group consisting of phenyl, pyridyl and thienyl;
- Y is a straight-chain or branched C₁-C₄-alkylene group, where one carbon can be replaced by oxygen, nitrogen or sulfur or by a cyclopropyl group;
- R_n¹ are one to five identical or different radicals from the group consisting of: hydrogen, halogen, C₁-C₆-alkyl, C₁-C₆-alkoxy, C₁-C₄-haloalkyl, C₁-C₄-haloalkoxy, C₁-C₄-alkylthio, C₁-C₄-alkoxyalkoxy;
- R² is phenyl-C₁-C₆-alkyl, which may carry one or more substituents selected from the group consisting of halogen, C₁-C₄-alkyl, C₁-C₄-haloalkyl, C₁-C₄-alkoxy and C₁-C₄-haloalkoxy on the phenyl ring, or
 is thienyl-C₁-C₄-alkyl, which may carry one or more substituents selected from the group consisting of halogen, C₁-C₄-alkyl, C₁-C₄-haloalkyl, C₁-C₄-alkoxy and C₁-C₄-haloalkoxy on the thienyl ring, or
 is pyrazolyl-C₁-C₄-alkyl, which may carry one or more substituents selected from the group consisting of halogen, C₁-C₄-alkyl, C₁-C₄-haloalkyl, C₁-C₄-alkoxy and C₁-C₄-haloalkoxy on the pyrazole ring,
- R_p³ are one to five identical or different radicals from the group consisting of: hydrogen, halogen, C₁-C₆-alkyl, C₁-C₆-alkoxy, C₁-C₄-haloalkyl, C₁-C₄-haloalkoxy, C₁-C₄-alkylthio, C₁-C₄-alkoxyalkoxy, C₁-C₆-alkylcarbonyl;
- n is 0-5;
- p is, depending on the number of free valencies, 0-4.

2. (original) A benzamidoxime of the formula I as claimed in claim 1 where A is phenyl.
3. (original) A benzamidoxime of the formula I as claimed in claim 1 where A is pyridyl.
4. (previously submitted) A benzamidoxime of the formula I as claimed in claim 1 where Y is a carbon.
5. (previously submitted) A benzamidoxime of the formula I as claimed in claim 1 where R_n^1 are one to five identical or different radicals from the group consisting of: hydrogen, halogen, C_1 - C_6 -alkyl, C_1 - C_6 -alkoxy, C_1 - C_4 -haloalkyl, C_1 - C_4 -haloalkoxy, C_1 - C_4 -alkylthio, C_1 - C_4 -alkoxyalkoxy.
6. (previously submitted) A benzamidoxime of the formula I as claimed in claim 1 where
 R^2 is phenyl- C_1 - C_6 -alkyl, which may carry one or more substituents selected from the group consisting of halogen, C_1 - C_4 -alkyl, C_1 - C_4 -haloalkyl, C_1 - C_4 -alkoxy and C_1 - C_4 -haloalkoxy on the phenyl ring, or
is thienyl- C_1 - C_4 -alkyl, which may carry one or more substituents selected from the group consisting of halogen, C_1 - C_4 -alkyl, C_1 - C_4 -haloalkyl, C_1 - C_4 -alkoxy and C_1 - C_4 -haloalkoxy on the thienyl ring, or
is pyrazolyl- C_1 - C_4 -alkyl, which may carry one or more substituents selected from the group consisting of halogen, C_1 - C_4 -alkyl, C_1 - C_4 -haloalkyl, C_1 - C_4 -alkoxy and C_1 - C_4 -haloalkoxy on the pyrazole ring.
7. (previously submitted) A benzamidoxime of the formula I as claimed in claim 1 where R_p^3 are one or two identical or different radicals from the group consisting of: hydrogen, halogen, C_1 - C_6 -alkyl, C_1 - C_6 -alkoxy, C_1 - C_4 -haloalkyl, C_1 - C_4 -haloalkoxy, C_1 - C_4 -alkylthio, C_1 - C_4 -alkoxyalkoxy.
8. (original) A benzamidoxime of the formula I as claimed in claim 7 where R_p^3 are hydrogen or C_1 - C_4 -alkyl.
9. (original) A benzamidoxime of the formula I as claimed in claim 1 where:
A is an aryl or hetaryl radical from the group consisting of phenyl, pyridyl and thienyl;

Y is a carbon;

R_n^1 are one to five identical or different radicals from the group consisting of: hydrogen, halogen, C_1 - C_6 -alkyl, C_1 - C_6 -alkoxy, C_1 - C_4 -haloalkyl, C_1 - C_4 -haloalkoxy, C_1 - C_4 -alkylthio, C_1 - C_4 -alkoxyalkoxy;

R^2 is phenyl- C_1 - C_6 -alkyl, which may carry one or more substituents selected from the group consisting of halogen, C_1 - C_4 -alkyl, C_1 - C_4 -haloalkyl, C_1 - C_4 -alkoxy and C_1 - C_4 -haloalkoxy on the phenyl ring, or

is thienyl- C_1 - C_4 -alkyl, which may carry one or more substituents selected from the group consisting of halogen, C_1 - C_4 -alkyl, C_1 - C_4 -haloalkyl, C_1 - C_4 -alkoxy and C_1 - C_4 -haloalkoxy on the thienyl ring, or

is pyrazolyl- C_1 - C_4 -alkyl, which may carry one or more substituents selected from the group consisting of halogen, C_1 - C_4 -alkyl, C_1 - C_4 -haloalkyl, C_1 - C_4 -alkoxy and C_1 - C_4 -haloalkoxy on the pyrazole ring,

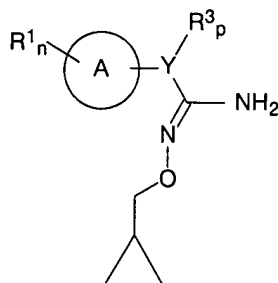
R_p^3 are one or two identical or different radicals from the group consisting of: hydrogen, halogen, C_1 - C_6 -alkyl, C_1 - C_6 -alkoxy, C_1 - C_4 -haloalkyl, C_1 - C_4 -haloalkoxy, C_1 - C_4 -alkylthio, C_1 - C_4 -alkoxyalkoxy;

n is 0-5;

p is 0-2.

10. (canceled)

11. (currently amended) An amidoxime derivative of the formula IV



IV

wherein [~~where R_n^1 and R_p^3 are as defined in claim 1~~]

R_n^1 are one to five identical or different radicals from the group consisting of: hydrogen, halogen, C_1 - C_6 -alkyl, C_1 - C_6 -alkoxy, C_1 - C_4 -haloalkyl, C_1 - C_4 -haloalkoxy, C_1 - C_4 -alkylthio, C_1 - C_4 -alkoxyalkoxy;

R_p^3 are one to five identical or different radicals from the group consisting of: hydrogen, halogen, C_1 - C_6 -alkyl, C_1 - C_6 -alkoxy, C_1 - C_4 -haloalkyl, C_1 - C_4 -haloalkoxy, C_1 - C_4 -alkylthio, C_1 - C_4 -alkoxyalkoxy, C_1 - C_6 -alkylcarbonyl;

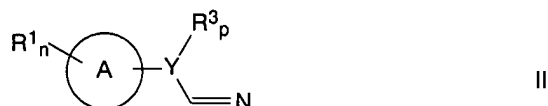
n is 0-5;

p is, depending on the number of free valencies, 0-4.

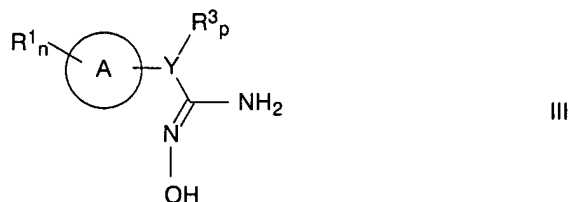
12. (canceled)

13. (canceled)

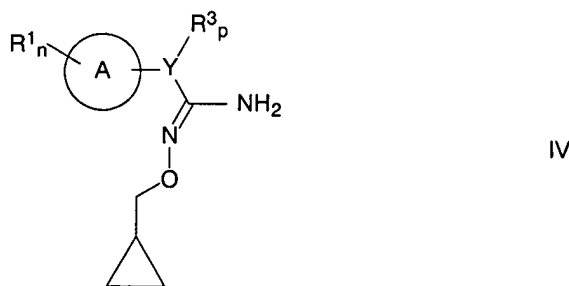
14. (previously submitted) A process for preparing the benzamidoxime derivatives of the formula I as claimed in claim 1, which comprises reacting benzonitriles of the formula II



with hydroxylamine or salts thereof in aqueous solution, preferably at a pH greater than 8, to give benzamidoximes of the formula III



which are then alkylated using a cyclopropylmethyl halide to give benzamidoximes of the formula IV



which are subsequently converted, using an appropriate acyl halide, into benzamidoxime derivatives of the formula I.

15. (previously submitted) An agrochemical composition, comprising a fungicidally effective amount of at least one benzamidoxime derivative of the formula I as claimed in claim 1 and, if appropriate, agriculturally utilizable auxiliaries or additives.

16. (currently amended) A method for controlling harmful fungi, which comprises treating the harmful fungi, their habitat or the plants, areas, materials or spaces to be kept free from them with a fungicidally effective amount of a compound of the formula I or [a] the fungicidal composition comprising a benzamidoxime derivative of the formula I as claimed in claim [~~16~~] 15.